

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA, : 15-CR-517 (WFK)  
Plaintiff, :  
-against- : United States Courthouse  
ALI SALEH, : Brooklyn, New York  
Defendant. : Monday, October 23, 2017  
- - - - -X : 12:30 p.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by Stenographic machine shorthand,  
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1 (In open court.)

2 THE COURTROOM DEPUTY: Criminal cause for status  
3 conference, Docket Number 15-CR-517, United States of  
4 America vs. Saleh.

5 Counsel, please state your appearances for the  
6 record and spell your first and last name for the court  
7 reporter.

8 MS. KOMATIREDDY: Good afternoon, Your Honor.  
9 Saritha Komatireddy for the United States. I'm joined by  
10 AUSAs Maggie Lee and Peter Baldwin.

11 S-A-R-I-T-H-A, last name is K-O-M-A-T-I-R-E-D-D-Y.

12 THE COURT: Good afternoon.

13 MS. LEE: Good afternoon, Maggie Lee, M-A-G-G-I-E,  
14 L-E-E.

15 THE COURT: Good afternoon.

16 MR. BALDWIN: Good afternoon, Your Honor. Peter  
17 Baldwin, P-E-T-E-R, B-A-L-D-W-I-N.

18 THE COURT: Good afternoon. All right. Please be  
19 seated.

20 MS. KOMATIREDDY: Thank you.

21 MS. KELLMAN: Good afternoon, Your Honor. Susan  
22 Kellman, S-U-S-A-N, K-E-L-L-M-A-N. And I am assisted at the  
23 counsel table today, Judge, by Sarah Kunstler, S-A-R-A-H,  
24 K-U-N-S-T-L-E-R.

25 THE COURT: And with you at counsel table today

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1 is?

2 MS. KONSTLER: Oh, I'm sorry Sarah Kunstler.

3 THE COURT: And in addition?

4 MS. KELLMAN: Oh, I'm sorry. And my client is  
5 present additionally.

6 THE COURT: Thank you. Please be seated.

7 This is our eighth status conference in this  
8 action, United States of America versus Saleh, 16-CR-517.  
9 The Defendant Ali Saleh is in custody. This case has been  
10 designated a complex action and the court order is in place  
11 to ensure the defendant's appearance for all of the court  
12 dates.

13 On September 16th of 2015 a complaint was filed  
14 alleging the defendant made multiple attempts to join and  
15 support the Islamic State of Iraq and the Levant, also known  
16 as ISIL, I-S-I-L. The complaint includes allegations that  
17 Defendant attempted to buy tickets to fly overseas on  
18 several occasions but was denied the ability to travel.

19 On February 11th of 2016 a superseding indictment  
20 was filed in this case charging the defendant with three  
21 counts of attempts to provide material support to a foreign  
22 terrorist organization in violation of 18 United States Code  
23 Sections 2339(B)(a)(1), (2) and 3551 *et sequentia*. The  
24 superseding indictment also contains a criminal forfeiture  
25 allegation. On March 2nd of 2016 the defendant was

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1 arraigned on superseding information with the Honorable  
2 Magistrate Judge Ramon Reyes.

3           The procedural history is as follows: On  
4 October 30th of 2015, the Court approved the force order to  
5 ensure Defendant's appearance at all court appearances in  
6 this case. The Court has granted the Government three  
7 motions for protective order in this action, November 16th  
8 of 2016, April 14th of 2016, and April 21st of 2016.

9           On March 10th of 2016 the Court entered an order  
10 transferring the defendant to the Metropolitan Detention  
11 Center in Brooklyn, a Bureau of Prisons facility, to perform  
12 psychiatric or psychological evaluation consistent with the  
13 provisions of 18 U.S.C. Section 4241 and instructing the  
14 Bureau of Prisons facility to conduct this evaluation. The  
15 evaluation has been completed.

16           At the status conference held on November 15th,  
17 2016, the Court scheduled a ten-day jury trial in this  
18 action to commence on Monday, November 27th of 2017 at  
19 9:30 a.m.

20           The most recent status conference was held on  
21 May 15th, 2017. Prior to today, the parties reported they  
22 were attempting to engage in consensual resolution plea  
23 negotiations in this case and indicated they would submit  
24 their proposed pretrial motions schedules by EFS. The Court  
25 subsequently approved the proposed pretrial motion schedule

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1 on July 18th of 2017. Pursuant to that schedule, the  
2 defendant's motions were due to be filed on or before  
3 September 29th of 2017, and the Government's responses were  
4 due to be filed on or before October 20th of 2017.

5 Is that a fair and accurate summary, Counsel? I  
6 will hear from the prosecution first and then the defense  
7 counsel.

8 MS. KELLMAN: Yes, Your Honor.

9 THE COURT: All right. I want to hear from the  
10 prosecution first. Ms. Komatireddy?

11 MS. KOMATIREDDY: Yes, Your Honor.

12 MS. KELLMAN: Yes, Your Honor.

13 THE COURT: Okay. I want to hear from the  
14 prosecution first and then the defense counsel. Where are  
15 we in this case?

16 MS. KOMATIREDDY: Your Honor. The Government --

17 THE COURT: You may remain seated, but please use  
18 the microphone.

19 MS. KOMATIREDDY: Yes, sir.

20 The Government is prepared to go forward. We  
21 intend to file a motion as per the schedule this coming  
22 Friday, October 27th. One thing we did want to put on the  
23 Court's radar, as part of our motion, we expect to ask for a  
24 anonymous and partial sequestered jury.

25 THE COURT: I will grant that application. Anyone

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1 that tries a case before me knows I don't allow in most  
2 innocuous situations much in the way of the information of  
3 the jury's identity, where they live, what their names are.  
4 So I will grant that application because it won't be  
5 terribly different than a straightforward contract  
6 litigation where juries are involved. I am big on  
7 protecting the confidentiality of the jury, and I will grant  
8 your application in this case because I do in virtually all  
9 cases.

10 MS. KOMATIREDDY: Thank you, Your Honor.

11 And then the other request in connection with that  
12 would be to propose the use of jury questionnaires, which is  
13 something that we typically do in terrorist cases, partially  
14 because of the anonymous nature of the jury, and partially  
15 because it permits us to further vet individual jurors in a  
16 way that ensures their impartiality in the case.

17 THE COURT: Now, logically is this something that  
18 you will propose the questionnaire to the Court and to the  
19 defense counsel at the same time for their comments, or how  
20 typically in this area does your office proceed? And I will  
21 ask Ms. Kellman what her experience, which I know is very  
22 vast and expansive as well, with respect to the  
23 questionnaires. So how do you propose to go forward?

24 Let me hear from you, Ms. Komatireddy, and then I  
25 will hear from Ms. Kellman.

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1 MS. KOMATIREDDY: Yes, Your Honor. In the past  
2 what we have done is proposed a questionnaire to defense  
3 counsel, and in many cases we can get consensus on most, if  
4 not all of the contents of the questionnaire and then submit  
5 any disputes to the Court in advance of trial.

6 THE COURT: Okay. What is your timetable for  
7 submitting it to Ms. Kellman for her review and then getting  
8 it back?

9 Ms. Kellman, how much time will you need to review  
10 it and then get it back? And, again, being mindful of the  
11 fact that we are scheduled to go to trial on the morning of  
12 Monday, November 27th and today is October 23rd, so we do  
13 not really have a lot of time to have back and forth on  
14 this. So what is your suggested timetable on the  
15 questionnaire part?

16 MS. KOMATIREDDY: Yes, Your Honor. We would  
17 suggest that we submit our proposed questionnaire at the  
18 same time as our motion on Friday.

19 THE COURT: On Friday? Okay.

20 Ms. Kellman, I will hear from you about scheduling  
21 and any other reports that we need to address. And please  
22 remain seated. Just pull the microphone to you, because I  
23 know you have got a bit of a cold, so...

24 MS. KELLMAN: I just recovered from laryngitis.

25 Your Honor, we have no problem with any of the

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1 dates that have been set forth by the Government. And if we  
2 were to get the questionnaire by Friday, I don't think we  
3 would have any difficulty going over it and getting it back  
4 to the Government within a week's time.

5 My real concern, Judge, is --

6 THE COURT: Counsel, just pull the mic a little  
7 bit closer. I'm sorry.

8 MS. KELLMAN: My real concern, Judge, is our  
9 client's mental health. And while we continually hope that  
10 it will improve, he seems to be -- I know the Bureau of  
11 Prisons has evaluated him and said that he is competent; but  
12 I would have to say that I am not sure that we have a doubt  
13 in his competence, but we do think that he has serious  
14 mental health issues. Your Honor has since approved the  
15 appointment of both a psychiatrist and a psychologist. And  
16 in the beginning, it was very difficult for us to have him  
17 evaluated because he refused to speak to or meet with the  
18 mental health professional.

19 THE COURT: I remember that, but I gather that has  
20 been overcome?

21 MS. KELLMAN: For the most part it has been  
22 overcome.

23 THE COURT: Okay.

24 MS. KELLMAN: There are days when he will refuse  
25 to meet with the mental health evaluators. There are days



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1 when he will refuse to meet with counsel, and then there are  
2 days that he will meet with us. But it is completely random  
3 and not a PSE pattern that we can identify.

4 THE COURT: So what do you suggest in light of all  
5 of that?

6 MS. KELLMAN: Well, the most recent evaluation  
7 that we have gotten from Dr. Stephen Xenakis, who is a  
8 psychiatrist, says among other things, that our client  
9 suffers from serious disturbances in his thinking and mood  
10 that underlie incomprehensible and impulsive behavior that  
11 demonstrates signs and symptoms of schizotypal personality  
12 disorder with bizarre and odd thinking, unusual and  
13 idiosyncratic interpretation of events, situations, episodic  
14 overwhelming distress and dysuria --

15 THE COURT: Has this been submitted to the Court?

16 MS. KELLMAN: It has not yet, Judge.

17 THE COURT: Okay. When do you anticipate  
18 submitting it to the Court?

19 MS. KELLMAN: I can get it to the Court today, if  
20 you would like.

21 THE COURT: You can file it EFS. I take it you  
22 will file that on notice to the Government as well --

23 MS. KELLMAN: Yes -- the Government has a copy,  
24 but yes.

25 THE COURT: Okay. So if you could just give it to

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1 the Court, that would be helpful.

2 MS. KELLMAN: We will file it under seal.

3 THE COURT: Of course.

4 MS. KELLMAN: Yes. And I can also email it to  
5 you, if that is --

6 THE COURT: Yes, that is fine. You can email it  
7 to Mr. Jackson as well, but it will be on -- just to be  
8 clear, it will be under seal.

9 MS. KELLMAN: Yes, of course, Judge.

10 My real concern at this point, Judge, is we have  
11 had a number of conversations with the Government, but  
12 unfortunately, we did not get what we hoped to be able to  
13 go, and that was to get our client down to Buckner for an  
14 updated evaluation. And when I say Buckner, we have doctors  
15 who are saying he has a real problem, and I think  
16 the Government would be more comfortable if the BOP said the  
17 same thing.

18 THE COURT: Well, let me stop you right there.  
19 Do you want him to go to Buckner for evaluation?

20 MS. KOMATIREDDY: We are not requesting that,  
21 Your Honor.

22 THE COURT: I did not think so.

23 All right. Go ahead.

24 MS. KELLMAN: I'm sorry. Your question was, did  
25 they mind that he --

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1 THE COURT: No. My question was had they  
2 requested it, and the answer was they have not requested it.

3 MS. KELLMAN: Okay. But I think in light of --  
4 Dr. Xenakis has seen him on many, many occasions --

5 THE COURT: Well, I look forward to reading his  
6 report.

7 MS. KELLMAN: Okay.

8 And, perhaps, Judge, the way to proceed, would be  
9 maybe another status conference.

10 THE COURT: I don't think so.

11 MS. KELLMAN: Okay.

12 THE COURT: I was reluctant -- Ms. Demas, as I  
13 recall, pushed this one. She was here last time, I think.  
14 But I didn't think it would add anything to the mix, and  
15 whether it has or not, the bottom line is we are here, we  
16 are going to go to trial, or there is going to be a  
17 consensual resolution, barring something else happening.  
18 But I don't see the need for another status conference.

19 MS. KELLMAN: That's fine, Judge. I think that  
20 the position that I find ourselves in --

21 THE COURT: I am glad that's fine. Go ahead.

22 MS. KELLMAN: I think the position that we find  
23 ourselves in now, Judge, is we really have an inability to  
24 communicate with our client.

25 THE COURT: You have an inability, what do you

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1 mean?

2 MS. KELLMAN: I'm sorry, Judge?

3 THE COURT: I couldn't hear you.

4 MS. KELLMAN: I'm sorry.

5 That we are finding it almost impossible to  
6 communicate with our client.

7 THE COURT: Almost impossible or impossible?

8 MS. KELLMAN: Well, when he speaks to us, it's  
9 possible, although we don't usually get any responses that  
10 are -- any responses that appear to suggest that he  
11 understands the questions or cares to answer our questions.  
12 He has been impossible to prepare for trial or to review  
13 discovery with. More often than not when we meet with him,  
14 he turns his back on us or he talks about things that are  
15 completely irrelevant to trial preparation making either a  
16 disposition, an agreed-upon disposition or a possibility of  
17 trial an impossibility.

18 THE COURT: Well, Counsel, you know -- you are a  
19 very experienced counsel, you know what motions you can make  
20 with respect to that and on the record, and obviously,  
21 the Government will respond and I will rule, and we will  
22 take it from there. As of now, we are scheduled to go  
23 forward to trial on November 27th of 2017. I will look  
24 forward to receiving motions and additional health reports  
25 and additional submissions from both defense counsel and

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1 from the Government, and I don't know what else the Court  
2 can say today unless you have something else to say?

3 MS. KELLMAN: No, nothing, Judge.

4 THE COURT: Okay. Anything else from the  
5 prosecution?

6 MS. KOMATIREDDY: No, Your Honor.

7 THE COURT: Okay. I look forward to receiving  
8 your submission. We are adjourned.

9 MS. KELLMAN: Thank you, Judge.

10 THE COURT: I will extend time in the interest of  
11 justice, and fully that will be signed by the defendant and  
12 by defense counsel, and that has not been done yet. Would  
13 you have that time appropriately?

14 (Pause in proceedings.)

15 THE COURT: Thank you.

16 I have what has been marked as Court Exhibit 1 for  
17 identification, Waiver of Speedy Trial Order Excludable  
18 Delay in the action United States of America against  
19 Ali Saleh. It's been signed by the defendant, by defense  
20 counsel, and by the prosecution. I am signing it.

21 May I have a motion to have Court Exhibit 1  
22 admitted into evidence?

23 MS. KOMATIREDDY: So moved, Your Honor.

24 THE COURT: Any objection?

25 MS. KELLMAN: No, Your Honor.

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1 THE COURT: It's admitted. Thank you.

2 (Court's Exhibit Number 1 so marked and received  
3 in evidence.)

4 THE COURT: Anything else I can help counsel with  
5 today?

6 MS. KOMATIREDDY: No, Judge.

7 MS. KELLMAN: No, thank you, Judge.

8 THE COURT: Thank you. We're adjourned.

9 MR. BALDWIN: Thank you, Your Honor.

10 (Matter concluded.)

11 --oo0oo--

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19 *I (we) certify that the foregoing is a correct transcript*  
20 *from the record of proceedings in the above-entitled matter.*

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21

/s/ David R. Roy  
DAVID R. ROY

November 9, 2017  
Date

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